A

Mohammad Hafizi bin Bahari & Anor v Pacific & Orient Insurance Co Bhd & Anor and another appeal

B

COURT OF APPEAL (PUTRAJAYA) — CIVIL APPEAL NOS J-04(IM)-579–12 OF 2022 AND J-04(IM)-580–12 OF 2022
VAZEER ALAM, AZIMAH OMAR AND WONG KIAN KHEONG JJCA
4 JUNE 2024

C

Civil Procedure — Intervener — Right to intervene — Intervener's application to intervene negligence suit between plaintiffs and defendant and to set aside sessions court's judgment against defendant was dismissed by sessions court — High Court allowed intervener's appeals — Appeal against High Court's decision — Whether D *High Court's decisions finally disposed of parties' rights within meaning of term 'decision' in s 3 of Courts of Judicature Act 1964 ('CJA') — Whether appeals barred by s 68(1)(a) to (g) CJA — Whether High Court's judgments were non-speaking judgments — Whether intervener could intervene and set aside sessions court's judgment — Whether plaintiffs could rely on Hong Leong Bank* E *Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals [2008] 2 MLJ 622 to support appeals — Whether High Court's policy invalidation order and High Court's dismissal of intervener's suit had effect on appeals — Whether sessions court functus officio in deciding encls 28 and 40 — Whether intervener estopped from filing encls 28 and 40 — Whether* F *intervener's appeals became academic — Whether intervener abused court process*

On 3 September 2014 at about 2.20am the first plaintiff was riding a motorcycle owner by the second plaintiff when the first plaintiff alleged that a motorcycle ridden by the defendant hit the rear side of the plaintiff's G motorcycle ('the incident') and caused the first plaintiff to suffer severe injuries and damage to the motorcycle. The defendant's motorcycle was insured by Pacific & Orient Insurance Co Bhd ('the intervener'). The plaintiffs filed a negligence suit against the defendant in the sessions court ('the negligence suit'). The intervener carried out investigation regarding the incident and H discovered that the defendant's motorcycle was not involved in the incident; and the defendant was paid by an unidentified man to make a false police report to support the negligence suit ('the intervener's discovery'). The intervener filed an originating summons against the defendant ('the intervener's policy invalidation suit') and the High Court granted a declaration I that the insurance policy issued by the intervener in respect of the defendant's motorcycle was void ('the High Court's policy invalidation order'). In the negligence suit, the plaintiffs obtained a judgment against the defendant ('sessions court's judgment'). After a period of two years and 11 months, the plaintiffs demanded the intervener to pay the sums adjudged in the sessions

court's judgment. The intervener filed two applications in the sessions court: (a) encl 28 for leave to intervene in the negligence suit; and (b) encl 40 to set aside the sessions court's judgment. Both encls 28 and 40 were dismissed by the sessions court judge and the intervener appealed to the High Court ('the intervener's appeals'). The High Court judge allowed the intervener's appeals where the intervener was allowed to intervene in the negligence suit and encl 40 was remitted to the sessions court to decide to decide whether the sessions court's judgment should be set aside ('High Court's decisions'). Hence, these two appeals against the High Court's decisions by the plaintiffs ('the appeals'). The plaintiffs advance the following contentions: (i) the High Court's decisions fell within the meaning of 'decision' in s 3 of the Courts of Judicature Act 1964 ('the CJA'); (ii) s 68(1) of the CJA did not bar the appeals; and (iii) the High Court's decisions should be set aside because: (A) no reason was given in the two grounds of judgments for the High Court's decisions ('GOJs') on why the intervener's appeals were allowed by the High Court and hence the GOJs were non-speaking judgments; (B) the sessions court was functus officio and could not hear encls 28 and 40 with reliance placed on *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622 ('Staghorn'); (C) the intervener was estopped from filing encls 28 and 40 because the intervener had instructed its solicitors not to act for the defendant in the sessions court ('the intervener's conduct'); (D) the intervener had abused court process by filing the intervener's appeals after obtaining an interlocutory injunction from the High Court to restrain the plaintiffs from executing the sessions court's judgment ('the intervener's interlocutory injunction'); (E) in view of the intervener's interlocutory injunction, the intervener's appeals had become academic; and (F) the High Court should not have intervened regarding the exercise of the sessions court's discretion to dismiss encls 28 and 40. The intervener also commenced a writ action in the High Court against the plaintiffs alleging that the plaintiffs had committed a tort of conspiracy to defraud the intervener by filing a fraudulent negligence suit and by obtaining the sessions court's judgment but it was dismissed ('the High Court's dismissal of the intervener's suit').

Held, dismissing the appeals:

(1) The High Court's decisions fell within the definition of 'decision' in s 3 of the CJA because if the appeals were allowed ie the intervener could not intervene in the negligence suit and could not set aside the sessions court's judgment, the plaintiffs could then enforce directly the sessions court's judgment against the intervener pursuant to s 96(1) of the Road Transport Act 1987 ('RTA'). In such an event, the rights of the plaintiffs and intervener were finally disposed of within the meaning of the term 'decision' in s 3 of the CJA. Consequently, the High Court's decisions were final 'orders' in the definition of 'decision' in s 3 of the CJA (see para 27).

(2) The appeals were not barred by s 68(1)(a) to (g) of the CJA as these appeals emanated from the sessions court's decisions in encls 28 and 40. Further, the High Court's decisions were made in the exercise of the High Court's appellate (not original) jurisdiction. Section 68(1)(a) to (g) of the CJA only barred appeals to the Court of Appeal against a decision of the High Court made in the exercise of the High Court's original (not appellate) capacity (see para 28).

(3) The GOJs only alluded to the competence of the appeals and as such, the GOJs were 'non-speaking' judgments. It could not be acceded that solely due to the fact that the GOJs had not provided any reason for the High Court's decisions, the court should intervene and allow these appeals. An appellate court had the judicial duty to decide an appeal by: (a) sieving through the appeal records and the parties' written submission; and (b) listening to oral submission by counsel (see para 29).

(4) The intervener had a right to intervene in the negligence suit in view of the insurer's statutory liability under s 96(1) of the RTA where it was 'necessary' for the intervener to intervene in the negligence suit. It was only just for the intervener to intervene in the negligence suit so as to ensure that the sessions court court decide whether the negligence suit had been fraudulently filed by the plaintiffs. Additionally, the High Court judge should have set aside the sessions court's judgment as the intervener had a right to be heard regarding the intervener's averment that the plaintiffs had filed a fraudulent negligence suit ('the intervener's averment') before the sessions court decided the negligence suit. The High Court had allowed the intervener to intervene in the negligence suit but did not set aside the sessions court's judgment. Accordingly, the negligence suit was remitted to the sessions court for an early trial to decide: (a) the negligence suit; and (b) the intervener's averment (see paras 33–35).

(5) The plaintiff could not rely on *Staghorn* to support the appeals because *Staghorn* could be easily distinguished from this case. *Staghorn* did not concern the insurer's statutory liability under s 96(1) of the RTA which entitled the intervener to intervene in the negligence suit and unlike *Staghorn*, the intervener had a right to be heard with regard to the intervener's averment (see para 37).

(6) The High Court's policy invalidation order did not bind the plaintiffs because the intervener did not cite the plaintiffs as co-defendants in the intervener's policy invalidation suit. The intervener could not rely on the High Court's policy invalidation order to resist the appeals. The High Court's dismissal of the intervener's suit was of no consequence in the appeals because the intervener's averment could only be tried in the sessions court (see paras 38–39).

(7) The sessions court was not functus officio when the sessions court judge heard encls 28 and 40. The functus officio doctrine was provided by case law and could not override written law. Section 96(1) of the RTA had expressly provided for the insurer's statutory liability which entitled the intervener to intervene in the negligence suit (see para 41).

(8) The intervener was not estopped by the intervener's conduct from proceeding with encl 28 and 40. The intervener's conduct was due solely to the intervener's discovery. More importantly, the intervener's conduct was the only lawful option available to the intervener. Accordingly, the intervener's conduct could not restrain, let alone estop, the intervener from exercising its right to resist the insurer's statutory liability under s 96(1) of the RTA based on the intervener's averment. Further, there was an inordinate delay of two years and 11 months from the date of the sessions court's judgment before the plaintiffs demanded the intervener to honour the sessions court's judgment under s 96(1) of the RTA. Such an inequitable conduct by the plaintiffs, disentitled the plaintiffs from relying on the equitable doctrine of estoppel to support the appeals (see paras 42 & 44).

(9) The intervener's appeals had not become academic when the sessions court had not commenced a trial to decide the negligence suit. Furthermore, the sessions court had yet to decide on the intervener's averment. It was crystal clear that the question regarding the intervener's averment was a live issue (see para 46).

(10) The intervener had not abused court process by filing the intervener's appeals after obtaining the intervener's interlocutory injunction. The exercise of the intervener's right to resist the insurer's statutory liability under s 96(1) of the RTA, could not constitute an abuse of court process, especially in light of the intervener's discovery and intervener's averment (see para 47).

[Bahasa Malaysia summary

Pada 3 September 2014 kira-kira jam 2.20 pagi plaintif pertama sedang menunggang motosikal milik plaintif kedua apabila plaintif pertama mendakwa bahawa satu motosikal yang ditunggang oleh defendan melanggar bahagian belakang motosikal plaintif ('kemalangan') dan menyebabkan plaintif pertama mengalami kecederaan parah dan kerosakan pada motosikal. Motosikal defendan telah diinsuranskan oleh Pacific & Orient Insurance Co Bhd ('pencelah'). Plaintif memfailkan saman kecuaian terhadap defendan di mahkamah sesyen ('saman kecuaian'). Pencelah menjalankan siasatan berhubung kemalangan itu dan mendapati motosikal defendan tidak terlibat dalam kemalangan itu; dan defendan telah dibayar oleh seorang lelaki yang tidak dikenali untuk membuat laporan polis palsu bagi menyokong saman kecuaian ('penemuan pencelah'). Pencelah memfailkan saman pemula

terhadap defendan ('saman pembatalan polisi pencelah') dan Mahkamah Tinggi memberikan pengisytiharan bahawa polisi insurans yang dikeluarkan oleh pencelah berkenaan dengan motosikal defendan adalah terbatal ('perintah pembatalan polisi Mahkamah Tinggi'). Dalam saman kecuaian, plaintif memperoleh penghakiman terhadap defendan ('penghakiman mahkamah sesyen'). Selepas tempoh dua tahun dan 11 bulan, plaintif menuntut pencelah membayar jumlah yang diputuskan dalam penghakiman mahkamah sesyen. Pencelah memfailkan dua permohonan di mahkamah sesyen: (a) lampiran 28 untuk kebenaran untuk mencelah dalam saman kecuaian; dan (b) lampiran 40 untuk mengetepikan penghakiman mahkamah sesyen. Kedua-dua lampiran 28 dan 40 telah ditolak oleh hakim mahkamah sesyen dan pencelah merayu kepada Mahkamah Tinggi ('rayuan pencelah'). Hakim Mahkamah Tinggi membenarkan rayuan pencelah di mana pencelah dibenarkan untuk mencelah dalam saman kecuaian dan lampiran 40 telah diremit ke mahkamah sesyen untuk memutuskan sama ada penghakiman mahkamah sesyen perlu diketepikan ('keputusan Mahkamah Tinggi'). Oleh itu, kedua-dua rayuan ini terhadap keputusan Mahkamah Tinggi oleh plaintif ('rayuan'). Plaintif mengemukakan pendapat berikut: (i) keputusan Mahkamah Tinggi termasuk dalam pengertian 'keputusan' dalam s 3 Akta Mahkamah Kehakiman 1964 ('AMK'); (ii) s 68(1) AMK tidak menghalang rayuan; dan (iii) keputusan Mahkamah Tinggi harus diketepikan kerana: (A) tiada alasan diberikan dalam dua alasan penghakiman keputusan Mahkamah Tinggi ('PKMT') tentang mengapa rayuan pencelah dibenarkan oleh Mahkamah Tinggi dan oleh itu PKMT adalah non-speaking judgments; (B) mahkamah sesyen adalah functus officio dan tidak dapat mendengar lampiran 28 dan 40 dengan pergantungan diletakkan pada *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622 ('Staghorn'); (C) pencelah telah dihalang daripada memfailkan lampiran 28 dan 40 kerana pencelah telah mengarahkan peguam caranya untuk tidak bertindak bagi defendan di mahkamah sesyen ('kelakuan pencelah'); (D) pencelah telah menyalahgunakan proses mahkamah dengan memfailkan rayuan pencelah selepas mendapat injunksi interlokutori daripada Mahkamah Tinggi untuk menghalang plaintif daripada melaksanakan penghakiman mahkamah sesyen ('injunksi interlokutori pencelah'); (E) dengan injunksi interlokutori pencelah, rayuan pencelah telah menjadi akademik; dan (F) Mahkamah Tinggi tidak sepatutnya campur tangan berhubung pelaksanaan budi bicara mahkamah sesyen untuk menolak lampiran 28 dan 40. Pencelah juga telah memulakan tindakan writ di Mahkamah Tinggi terhadap plaintif yang mendakwa plaintif telah melakukan tort konspirasi untuk menipu pencelah dengan memfailkan saman kecuaian penipuan dan dengan mendapatkan penghakiman mahkamah sesyen tetapi ia telah ditolak ('penolakan Mahkamah Tinggi terhadap saman pencelah').

Diputuskan, menolak rayuan-rayuan:

(1) Keputusan Mahkamah Tinggi termasuk dalam definisi 'keputusan' dalam s 3 AMK kerana jika rayuan dibenarkan iaitu pencelah tidak boleh campur tangan dalam saman kecuaian dan tidak boleh mengenepikan penghakiman mahkamah sesyen, plaintif boleh kemudian menguatkuasakan secara langsung penghakiman mahkamah sesyen terhadap pencelah menurut s 96(1) Akta Pengangkutan Jalan 1987 ('APJ'). Dalam keadaan sedemikian, hak plaintif dan pencelah akhirnya dilupuskan dalam pengertian istilah 'keputusan' dalam s 3 AMK. Akibatnya, keputusan Mahkamah Tinggi adalah 'perintah' muktamad dalam definisi 'keputusan' dalam s 3 AMK (lihat perenggan 27).

(2) Rayuan tidak dihalang oleh s 68(1)(a) hingga (g) AMK kerana rayuan ini bermula daripada keputusan mahkamah sesyen dalam lampiran 28 dan 40. Selanjutnya, keputusan Mahkamah Tinggi telah dibuat dalam pelaksanaan bidang kuasa rayuan (bukan asal) Mahkamah Tinggi. Seksyen 68(1)(a) hingga (g) AMK hanya menghalang rayuan kepada Mahkamah Rayuan terhadap keputusan Mahkamah Tinggi yang dibuat dalam melaksanakan kapasiti asal (bukan rayuan) Mahkamah Tinggi (lihat perenggan 28).

(3) PKMT hanya merujuk kepada kecekapan rayuan dan oleh itu, PKMT adalah penghakiman 'non-speaking'. Ia tidak boleh dipersetujui bahawa semata-mata disebabkan oleh fakta bahawa PKMT tidak memberikan sebarang sebab untuk keputusan Mahkamah Tinggi, mahkamah harus campur tangan dan membenarkan rayuan ini. Mahkamah rayuan mempunyai kewajipan kehakiman untuk memutuskan rayuan dengan: (a) menapis rekod rayuan dan penghujahan bertulis pihak-pihak; dan (b) mendengar hujahan lisan oleh peguam (lihat perenggan 29).

(4) Pencelah mempunyai hak untuk campur tangan dalam saman kecuaian memandangkan liabiliti statutori penanggung insurans di bawah s 96(1) APJ di mana ia adalah 'perlu' bagi pencelah untuk campur tangan dalam saman kecuaian itu. Adalah adil untuk pencelah campur tangan dalam saman kecuaian itu bagi memastikan mahkamah sesyen memutuskan sama ada saman kecuaian itu telah difailkan secara penipuan oleh plaintif. Di samping itu, hakim Mahkamah Tinggi sepatutnya mengenepikan penghakiman mahkamah sesyen kerana pencelah mempunyai hak untuk didengar berhubung penegasan pencelah bahawa plaintif telah memfailkan saman kecuaian penipuan ('penegasan pencelah') sebelum mahkamah sesyen memutuskan saman kecuaian. Mahkamah Tinggi telah membenarkan pencelah campur tangan dalam saman kecuaian itu tetapi tidak mengenepikan penghakiman mahkamah sesyen. Sehubungan itu, saman kecuaian telah diremit ke mahkamah sesyen untuk perbicaraan awal bagi memutuskan: (a) saman kecuaian; dan (b) penegasan pencelah (lihat perenggan 33–35).

(5) Plaintif tidak boleh bergantung kepada *Staghorn* untuk menyokong

rayuan kerana *Staghorn* boleh dibezakan dengan mudah daripada kes ini. *Staghorn* tidak mengambil kira liabiliti statutori penanggung insurans di bawah s 96(1) APJ yang memberi hak kepada pencelah untuk campur tangan dalam saman kecuaian dan tidak seperti *Staghorn*, pencelah mempunyai hak untuk didengar berkenaan dengan penegasan pencelah (lihat perenggan 37).

(6) Perintah pembatalan polisi Mahkamah Tinggi tidak mengikat plaintif kerana pencelah tidak memetik plaintif sebagai defendan bersama dalam saman pembatalan polisi pencelah itu. Pencelah tidak boleh bergantung pada perintah pembatalan polisi Mahkamah Tinggi untuk menentang rayuan. Penolakan Mahkamah Tinggi terhadap saman pencelah tidak mempunyai sebarang akibat dalam rayuan kerana penegasan pencelah hanya boleh dibicarakan di mahkamah sesyen (lihat perenggan 38–39).

(7) Mahkamah sesyen tidak functus officio apabila hakim mahkamah sesyen mendengar lampiran 28 dan 40. Doktrin functus officio diperuntukkan oleh undang-undang kes dan tidak boleh mengatasi undang-undang bertulis. Seksyen 96(1) APJ telah dengan jelas memperuntukkan liabiliti statutori penanggung insurans yang memberi hak kepada pencelah untuk campur tangan dalam saman kecuaian (lihat perenggan 41).

(8) Pencelah tidak dihalang oleh kelakuan pencelah daripada meneruskan lampiran 28 dan 40. Kelakuan pencelah itu adalah disebabkan semata-mata oleh penemuan pencelah tersebut. Lebih penting lagi, kelakuan pencelah adalah satu-satunya pilihan yang sah yang tersedia untuk pencelah. Sehubungan itu, kelakuan pencelah tidak dapat mengekang, apatah lagi menghalang, pencelah daripada menggunakan haknya untuk menentang liabiliti statutori penanggung insurans di bawah s 96(1) APJ berdasarkan penegasan pencelah. Selanjutnya, terdapat kelewatan yang melampau selama dua tahun dan 11 bulan dari tarikh penghakiman mahkamah sesyen sebelum plaintif menuntut pencelah untuk memenuhi penghakiman mahkamah sesyen di bawah s 96(1) APJ. Kelakuan tidak adil oleh plaintif, menyebabkan plaintif tidak berhak bergantung pada doktrin estoppel ekuiti untuk menyokong rayuan (lihat perenggan 42 & 44).

(9) Rayuan pencelah tidak menjadi akademik apabila mahkamah sesyen belum memulakan perbicaraan untuk memutuskan saman kecuaian. Tambahan pula, mahkamah sesyen masih belum memutuskan penegasan pencelah itu. Jelas sekali bahawa soalan mengenai penegasan pencelah adalah isu langsung (lihat perenggan 46).

(10) Pencelah tidak menyalahgunakan proses mahkamah dengan memfailkan rayuan pencelah selepas mendapat injunksi interlokutori pencelah. Pelaksanaan hak pencelah untuk menentang liabiliti statutori penanggung insurans di bawah s 96(1) APJ, tidak boleh membentuk

penyalahgunaan proses mahkamah, terutamanya berdasarkan penemuan pencelah dan penegasan pencelah (lihat perenggan 47).]

Cases referred to

AmGeneral Insurance Bhd v Sa' Amran a/l Atan & Ors and other appeals [2022] 5 MLJ 825, FC (refd)

Celcom (Malaysia) Berhad & Anor v Tan Sri Dato' Tajudin bin Ramli & Ors and another suit [2016] MLJU 1167, HC (refd)

Corsa Tech Sdn Bhd v YTB Impression Sdn Bhd & Ors [2021] MLJU 2210, HC (refd)

Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and another appeal [2018] 3 MLJ 281, FC (refd)

Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals [2008] 2 MLJ 622; [2008] 2 CLJ 121, FC (distd)

Lazarus Estates Ltd v Beasley [1956] 1 All ER 341, CA (refd)

Muniandy a/l Thamba Kaundan & Anor v D & C Bank Bhd & Anor [1996] 1 MLJ 374, FC (refd)

Natseven TV Sdn Bhd v Television New Zealand Limited [2001] MLJU 511; [2001] 4 AMR 4648, HC (refd)

Nor Hazliza bt Ismail & Anor v Mohamed Yusoff bin Shaik Madar [2024] MLJU 270; [2024] MLRAU 28, CA (refd)

Ong Leong Chiou & Anor v Keller (M) Sdn Bhd & Ors [2021] 3 MLJ 622, FC (refd)

Stone World Sdn Bhd v Engareh (M) Sdn Bhd [2020] 12 MLJ 237, FC (refd)

Syahin Hafiy Danial bin Soh Ahmad Luptepi Amin v Mansur bin Yunus & Anor [2021] 8 MLJ 297, HC (refd)

Toh Seow Ngan & Ors v Toh Seak Keng & Ors [1990] 2 MLJ 303, SC (refd)

Legislation referred to

Courts of Judicature Act 1964 ss 3, 28(1)(a), (1)(b), (1)(c), (1)(d), 67(1), 68, 68(1), (1)(a), (1)(b), (1)(c), (1)(d), (1)(e), (1)(f), (1)(g), 69(4), (5)

Road Transport Act 1987 ss 2, 96, 96(1), (2), (2)(a), (3)

Rules of Court 2012 O1A, O 2 r 1(2), O 15 rr 2(1), 3(1), 5(1), 6(2)(b), (2)(b)(i), (2)(b)(ii)

Rules of the Court of Appeal 1994 r 105

Subordinate Courts Act 1948 s 65(1)(a), (5)(b)

Christie Soosay Nathan (with Lee Yen Yee and Jusween Kaur) (Teo & Assoc) for the appellants.

Kamalanathan Ratnam (with Vinod a/l R Kamalanathan and Anis Amirah bt Zakaria) (Vinod Kamalanathan & Assoc) for the first respondent.

Wong Kian Kheong JCA (delivering judgment of the court):

A. INTRODUCTION

[1] The above two appeals ('two appeals') are heard together and discuss the effect of s 96(1) and (3) of the Road Transport Act 1987 ('the RTA') (as interpreted by the recent Federal Court's judgment delivered by Abdul Rahman Sebli FCJ (as he then was) in *AmGeneral Insurance Bhd v Sa' Amran a/l Atan & Ors and other appeals* [2022] 5 MLJ 825 (*Sa' Amran*)) on, among others, the following two suits:

(1) an action filed by a plaintiff ('claimant') for damages from a defendant ('insured') based on the insured's negligence ('claimant's suit (insured's liability)') regarding an incident involving a 'motor vehicle' (defined in s 2 of the RTA); and

(2) a suit instituted by an insurer of the insured ('insurer') under s 96(3) of the RTA to invalidate the insurance policy ('policy') issued by the insurer to the insured ('insurer's suit (policy invalidation)').

B. BACKGROUND

[2] For ease of reference, we shall refer to parties as they were in the sessions court.

[3] The second plaintiff ('second plaintiff') is the registered owner of a motorcycle bearing the registration No PER 6664 ('motorcycle').

[4] At about 2.20am, 3 September 2014:

(1) the first plaintiff ('first plaintiff') was riding the motorcycle along Jalan Skudai Pantai Lido, Johor, when the first plaintiff alleged that a motorcycle with the registration No JQA 6107 and ridden by the defendant ('defendant') hit the rear side of the plaintiff's motorcycle ('incident'); and

(2) the incident had caused:

(a) the first plaintiff to suffer severe injuries; and

(b) damage to the motorcycle.

[5] The defendant's motorcycle was insured by Pacific & Orient Insurance Co Bhd ('intervener').

C. LEGAL PROCEEDINGS

C(1). Negligence suit

[6] With regard to the incident, on 19 September 2016, the first and second plaintiffs (referred collectively in this judgment as the 'plaintiffs') filed a negligence suit against the defendant in the Johore Bahru Sessions Court ('negligence suit'). A

[7] In the negligence suit: B

(1) the intervener (as the defendant's insurer) initially appointed Messrs SK Lee ('Messrs SKL') to act for the defendant; and

(2) Messrs SKL filed a defence for the defendant which pleaded, among others, that the defendant's motorcycle was not involved in the incident. C

[8] The intervener carried out investigation regarding the incident and discovered as follows, among others:

(1) the defendant's motorcycle was not involved in the incident; and D

(2) the defendant was paid by an unidentified man to make a false police report to support the negligence suit,

('intervener's discovery'). E

[9] In view of the intervener's discovery:

(1) the intervener filed Originating Summons No WA-24NCC-537–12 of 2016 against the defendant in the Kuala Lumpur High Court ('intervener's suit (policy invalidation)'). In the intervener's suit (policy invalidation), on 25 January 2017 the High Court granted a declaration that the insurance policy issued by the intervener in respect of the defendant's motorcycle, was void ('High Court's policy invalidation order'); and F

(2) on 28 February 2017, Messrs SKL applied to the sessions court for an order that Messrs SKL would cease to act for the defendant in the negligence suit (Messrs SKL's application'). The sessions court allowed Messrs SKL's application on 14 March 2017 ('sessions court's order (Messrs SKL's discharge)') and thereafter the defendant was not legally represented in the negligence suit. G H

[10] On 28 September 2017, in the negligence suit:

(1) the defendant was not present at the trial in the sessions court ('trial'). The plaintiffs did not however adduce any evidence to support the negligence suit at the trial; and I

(2) the plaintiffs obtained a judgment in the sessions court against the defendant ('sessions court's judgment'). According to the sessions court's judgment, among others:

A
(a) the defendant was 100% liable to the plaintiffs for the tort of negligence;

(b) the defendant shall pay a total sum of RM998,503 as general damages;

B
(c) actual loss of earnings and future loss of earnings amounting to RM228,000 shall be paid by the defendant;

(d) the defendant shall pay a total sum of RM2,453,714.90 to take care of the 'plaintiff' (the sessions court's judgment did not specify whether the first or second plaintiff) until the age of 76 years old;
C

(e) an amount of RM127,200 shall be paid by the defendant as the total transport cost for the 'plaintiff's' future medical treatment (the sessions court's judgment did not specify whether the first or second plaintiff);
D

(f) the defendant shall pay special damages in a sum of RM7,090.80;

(g) pre-judgment interest amounting to RM257,386.38 shall be paid by the defendant;

E
(h) the defendant shall be liable for total costs of RM48,513.20; and

(i) the total sum of damages and interest shall be paid by the defendant into the client's account of the plaintiffs' solicitors ('sessions court's judgment (payment into client's account (plaintiffs' solicitors))').

F
[11] After a period of two years and 11 months from the date of the sessions court's judgment, the plaintiffs' solicitors sent a letter dated 28 August 2020 to the intervener ('plaintiffs' letter (28 August 2020)'). The plaintiffs' letter (28 August 2020):

G
(1) served the sessions court's judgment on the intervener; and

(2) demanded the intervener to pay the sums adjudged in the sessions court's judgment (the total judgment sum, interest and costs exceeded RM4m) within 14 days from the date of the plaintiffs' letter (28 August
H 2020) and if the intervener failed to do so, the plaintiffs would execute the sessions court's judgment by way of a writ of seizure and sale without any further reference to the intervener.

[12] The intervener filed two applications in the sessions court, namely:
I
(1) in court encl No 28, the intervener applied for, among others, leave of the sessions court to intervene in the negligence suit ('encl 28'); and

(2) court encl No 40 was filed by the intervener for, among others, an order of the sessions court to set aside the sessions court's judgment ('encl 40').

[13] On 25 May 2021, the learned sessions court judge:

(1) dismissed encl 28 with costs of RM700 ('sessions court's dismissal (encl 28)'); and

(2) dismissed encl 40 with costs of RM1,500 ('sessions court's dismissal (encl 50)').

[14] The intervener filed appeals to the High Court against:

(1) the sessions court's dismissal (encl 28) ('intervener's appeal (encl 28)'); and

(2) the sessions court's dismissal (encl 40) ('intervener's appeal (encl 40)').

[15] On 22 November 2022, the learned High Court judge:

(1) allowed the intervener's appeal (encl 28) as follows, among others:

(a) the intervener was allowed to intervene in the negligence suit; and

(b) the plaintiffs shall pay costs of RM2,500 to the intervener, ('High Court's decision (encl 28)').

(2) allowed the intervener's appeal (encl 40) with the following order:

(a) encl 40 was remitted to the sessions court to decide whether the sessions court's judgment should be set aside; and

(b) costs of RM2,500 shall be paid by the plaintiffs to the intervener, ('High Court's decision (encl 40)').

[16] The plaintiffs have filed the two appeals to the Court of Appeal against the High Court's decision (encl 28) and High Court's decision (encl 40) ('two High Court's decisions (encls 28 and 40)').

C(2). Proceedings pursuant to two High Court's decisions (encls 28 and 40)

[17] Pursuant to the two High Court's decisions (encls 28 and 40), on 14 February 2023 the intervener filed an application to set aside the sessions court's judgment in court encl No 137 ('encl 137').

[18] On 16 May 2023, the sessions court dismissed encl 137 ('sessions court's dismissal (encl 137)').

[19] The intervener appealed to the High Court against the sessions court's dismissal (encl 137) ('intervener's appeal (encl 137)').

C(3). Intervener's suit in High Court against plaintiffs

[20] On 18 September 2020, the intervener commenced a writ action in the Kuala Lumpur High Court Civil Suit No WA-22NCC-449–09 of 2020 against the plaintiffs ('intervener's suit (plaintiffs)'). In the intervener's suit (plaintiffs), among others:

(1) the intervener alleged that the plaintiffs had committed a tort of conspiracy to defraud the intervener by filing a fraudulent negligence suit and by obtaining the sessions court's judgment; and

(2) the intervener applied for, among others:

(a) damages to be awarded in favour of the intervener against the plaintiffs; and

(b) a perpetual injunction to restrain the plaintiffs from enforcing the sessions court's judgment against the intervener.

[21] On 1 March 2023, Liza Chan Sow Keng J dismissed the intervener's suit (plaintiffs) with costs of RM90,000 ('High Court's dismissal (intervener's suit)'). The intervener has appealed to the Court of Appeal against the High Court's dismissal (intervener's suit) ('intervener's appeal (intervener's suit)'). At the time of the preparation of this written judgment, the intervener's appeal (intervener's suit) is still pending in the Court of Appeal.

D. GROUNDS FOR TWO HIGH COURT'S DECISIONS (ENCLS 28 AND 40)

[22] According to the grounds of judgment for the two High Court's decisions (encls 28 and 40) ('two GOJs (encls 28 and 40)'):

(1) these two appeals cannot be appealed to the Court of Appeal because the two High Court's decisions (encls 28 and 40) do not finally dispose of the rights of the plaintiffs and interveners in the negligence suit. Consequently, the two High Court's decisions (encls 28 and 40) do not fall within the meaning of 'decision' in s 3 of the Courts of Judicature Act 1964 ('the CJA'); and

(2) Parliament has amended CJA by way of the Courts of Judicature (Amendment) Act 2022 (Act A1661). Act A1661 takes effect on 1 October 2022 and bars these two appeals. According to the learned High Court judge:

> *To my mind, when the law doesn't allow an appeal against a setting aside of a judgment in default, a fortiori the same should pertain to a ruling allowing a party to apply to set aside a judgment in default. To hold otherwise would render [Act A1661] otiose as it is a sine qua non or prerequisite to setting aside a judgment in default that an application has to be made*. (Emphasis added.)

E. SUBMISSION BY PARTIES

[23] In support of the two appeals, the plaintiffs' learned counsel had advanced the following contentions, among others:

(1) the two High Court's decisions (encls 28 and 40) fall within the meaning of 'decision' in s 3 of the CJA;

(2) s 68(1) of the CJA does not bar the two appeals; and

(3) the two High Court's decisions (encls 28 and 40) should be set aside because:

(a) the two GOJs (encls 28 and 40) only stated that the two appeals were not competent due to the definition of 'decision' in s 3 of the CJA and s 68 of the CJA. No reason was given in the two GOJs (encls 28 and 40) on why the intervener's appeal (encl 28) and intervener's appeal (encl 28) (referred collectively in this judgment as the 'intervener's two appeals (encls 28 and 40)') were allowed by the High Court. Hence, the two GOJs (encls 28 and 40) were 'non-speaking' judgments;

(b) the proceedings in the sessions court had been concluded with the perfection of the sessions court's judgment. As such, the sessions court was *functus officio* and could not hear encls 28 and 40. Reliance was placed on the Federal Court's judgment in *Hong Leong Bank Bhd (formerly known as Hong Leong Finance Bhd) v Staghorn Sdn Bhd and other appeals* [2008] 2 MLJ 622; [2008] 2 CLJ 121 (*Staghorn*);

(c) the intervener was estopped from obtaining the two High Court's decisions (encls 28 and 40) due to the following reasons:

(i) the intervener had appointed Messrs SKL to act for the defendant in the negligence suit but subsequently instructed Messrs SKL to cease to act for the defendant. Hence, the sessions court's order (Messrs SKL's discharge); and

(ii) the intervener did not apply to intervene in the negligence suit before the plaintiffs obtained the sessions court's judgment.

(d) the intervener had abused court process by:

(i) filing encls 28 and 40 in the negligence suit; and

(ii) instituting the intervener's suit (plaintiffs) where the intervener had obtained an interlocutory injunction from the High Court to restrain the plaintiffs from executing the sessions court's judgment until the High Court's disposal of the intervener's suit (plaintiffs)

('intervener's interlocutory injunction (plaintiffs)');

(e) in view of the intervener's interlocutory injunction (plaintiffs), the intervener's two appeals (encls 28 and 40) had become academic; and

(f) the learned High Court judge should not have intervened regarding the exercise of the learned sessions court's discretion to dismiss encls 28 and 40.

[24] The intervener's learned counsel has made, among others, the following submission to resist the two appeals:

(1) as explained in the two GOJs (encls 28 and 40), the plaintiffs are barred from filing these two appeals;

(2) the intervener is entitled to intervene in the negligence suit because:

(a) the plaintiffs have obtained the sessions court's judgment which can be enforced by the plaintiffs against the intervener under s 96(1) of the RTA; and

(b) in view of the demand made on the intervener by way of the plaintiff's letter (28 August 2020), the intervener has an interest to intervene in the negligence suit pursuant to O 15 r 6(2)(b) of the Rules of Court 2012 ('the RC').

(3) the sessions court's judgment should be set aside on the following grounds:

(a) the sessions court's judgment was based on fraud with regard to the incident;

(b) the plaintiffs did not adduce any evidence at the trial. There was therefore no evidence to justify the defendant's 100% liability in the tort of negligence to the plaintiffs;

(c) the sessions court's judgment did not adjudge which sum was payable by the defendant to the first plaintiff, second plaintiff or both the plaintiffs; and

(d) instead of the sessions court's judgment ('payment into client's account (plaintiffs' solicitors)'), the amount of damages for the first plaintiff should be paid into a trust fund for the first plaintiff's future care and future medical treatment.

F. ISSUES

[25] The following questions shall be determined in these two appeals:

(1) on the issue of whether the plaintiffs can file the two appeals:

(a) did the two High Court's decisions (encls 28 and 40) finally dispose of the rights of the plaintiffs and intervener within the meaning of the term 'decision' in s 3 of the CJA? and

(b) does any one of the paragraphs in s 68(1)(a) to (g) of the CJA bar the two appeals?

(2) as the two GOJs (encls 28 and 40) are not 'speaking' judgments, should the Court of Appeal:

(a) reverse the two High Court's decisions (encls 28 and 40); or

(b) decide the two High Court's decisions (encls 28 and 40) on their merits after:

(i) sieving through the appeal records and written submission of the parties; and

(ii) listening to learned counsel's oral submission?

(3) whether the intervener can:

(a) intervene in the negligence suit pursuant to O 15 r 6(2)(b)(i) and/or (ii) read with O 1A and O 2 r 1(2) of the RC; and

(b) set aside the sessions court's judgment on the ground that the intervener had been deprived of its right to defend the negligence suit with regard to the intervener's averment that the plaintiffs had filed a fraudulent negligence suit ('intervener's averment (fraudulent negligence suit)').

With regard to the above questions:

(i) does the Federal Court's judgment in *Staghorn* bar the intervener from intervening in the negligence suit?

(ii) what is the effect of the High Court's policy invalidation order and High Court's dismissal (intervener's suit)?

(iii) whether the sessions court was *functus officio* and could not therefore hear encls 28 and 40;

(iv) is the intervener estopped from filing encls 28 and 40 by instructing Messrs SKL to withdraw as the defendant's solicitors in the negligence suit?

(v) had the intervener's two appeals (encls 28 and 40) become academic? and

(vi) whether the intervener has abused court process by filing the intervener's two appeals (encls 28 and 40) after obtaining the intervener's interlocutory injunction (plaintiffs).

A G. ARE THESE TWO APPEALS COMPETENT?

[26] The definition of 'decision' in ss 3, 28, 67(1) and 68 of the CJA are reproduced below:

B s 3 *Interpretation*

In this Act, unless the context otherwise requires:

...

C *'decision' means judgment, sentence or order, but does not include any ruling made in the course of a trial or hearing of any cause or matter which does not finally dispose of the rights of the parties.*

s 28 *Civil appeals from subordinate courts*.

(1) *No appeal shall lie to the High Court in any of the following cases*:

D (a) subject to any other written law, from a decision of a subordinate court in any civil cause or matter where the amount in dispute or the value of the subject matter is ten thousand ringgit or less except on a question of law;

(b) where a subordinate court dismissed any application for a summary judgment;

E (c) where a subordinate court dismissed any application to strike out any writ or pleading; and

(d) where a subordinate court allowed any application to set aside a judgment in default.

F s 67 *Jurisdiction to hear and determine civil appeals*

(1) *The Court of Appeal shall have jurisdiction to hear and determine appeals from any judgment or order of any High Court in any civil cause or matter, whether made in the exercise of its original or of its appellate jurisdiction, subject nevertheless to this* or any other *written law regulating the terms and conditions upon which such appeals shall be brought*.

G s 68 *Non-appealable matters*.

(1) *No appeal shall be brought to the Court of Appeal in any of the following cases*:

H (a) when the amount or value of the subject-matter of the claim (exclusive of interest) is less than two hundred and fifty thousand ringgit, except with the leave of the Court of Appeal;

(b) where the judgment or order is made by consent of parties;

I (c) where the judgment or order relates to costs only which by law are left to the discretion of the Court, except with the leave of the Court of Appeal;

(d) where, by any written law for the time being in force, the judgment or order of the High Court, is expressly declared to be final;

(e) where a High Court dismissed any application for a summary judgment;

(f) where a High Court dismissed any application to strike out any writ or pleading; and

(g) where a High Court dismissed any application to set aside a judgment in default. (Emphasis added.)

G(1). Whether two High Court's decisions (encls 28 and 40) finally dispose of parties' rights

[27] With respect to the learned High Court judge, we are of the view that the two High Court's decisions (encls 28 and 40) fall within the definition of 'decision' in s 3 of the CJA. This is because if the two appeals are allowed by the Court of Appeal, ie, the intervener cannot intervene in the negligence suit and cannot set aside the sessions court's judgment, the plaintiffs can then enforce directly the sessions court's judgment against the intervener pursuant to s 96(1) of the RTA. In such an event, the rights of the plaintiffs and intervener are finally disposed of within the meaning of the term 'decision' in s 3 of the CJA. Consequently, the two High Court's decisions (encls 28 and 40) are final 'orders' in the definition of 'decision' in s 3 of the CJA which are appealable to the Court of Appeal pursuant to s 67(1) of the CJA.

G(2). Are two appeals barred by s 68(1)(a) to (g) of the CJA?

[28] These two appeals, in our view, are not barred by s 68(1)(a) to (g) of the CJA. Our reasons are as follows:

(1) these two appeals emanated from the sessions court's decisions in encls 28 and 40. The intervener's two appeals (encls 28 and 40) to the High Court are not barred by s 28(1)(a) to (d) of the CJA. Accordingly, once two High Court's decisions (encls 28 and 40) are made, the plaintiffs can file the two appeals to the Court of Appeal pursuant to s 67(1) of the CJA; and

(2) the two High Court's decisions (encls 28 and 40) are made in the exercise of the High Court's appellate (not original) jurisdiction. Section 68(1)(a) to (g) CJA only bar appeals to the Court of Appeal against a decision of the High Court made in the exercise of the High Court's original (not appellate) capacity. We rely on the following two judgments of the Court of Appeal in *Nor Hazliza bt Ismail & Anor v Mohamed Yusoff bin Shaik Madar* [2024] MLJU 270; [2024] MLRAU 28:

(a) Hashim Hamzah JCA decided as follows, in [19] to [24]:

> [19] *In the present case, the application to strike out the plaintiff's writ and statement of claim was filed by the defendants in the subordinate court, ie, the sessions court. It was the sessions court that decided to allow the defendants' application to strike out the plaintiff's writ and statement of*

claim. At the time when the appeal was filed against the decision of the sessions court, the amendment of the [CJA] had not yet taken place.

[20] *No such application was filed before the High Court. When the High Court heard the plaintiff's appeal, it was doing so in the exercise of its appellate jurisdiction. When this matter came before us, we were exercising our jurisdiction to hear and determine appeals from the order of the High Court made in the exercise of its appellate jurisdiction (see s 67(1) of the (CJA))*.

[21] *In our considered view, the amendment to the [CJA] does not restrict the Court of Appeal from hearing and determining appeals arising from the judgment or order of the High Court in the exercise of its appellate jurisdiction against the decision of the subordinate courts, which allows an application to strike out any writ or pleading*.

[22] *We do not see any room to impose the unambiguous, plain, and ordinary meaning of the words in s 68(1)(f) [CJA] on the surrounding facts of the present case.*

[23] *On a side note, as an aid of statutory interpretation, we believe our view is in line with the object and intent of the amendment to the [CJA], as evident by the speech of the then Deputy Minister at the Prime Minister's Office when the bill was tabled for second and third reading on 25 July 2022 in Parliament*:

... Cadangan pindaan kepada Akta Mahkamah Kehakiman 1964 [Akta 91] melibatkan dua oerkara utama iaitu mengehadkan rayuan untuk kes-kes interlokutori sivil dan penyediaan dokumen dan rekod rayuan bebas kertas dalam prosiding perbicaraan rayuan jenayah ... Kaedah perubahan substantif yang dicadangkan ialah dengan mengehadkan rayuan dari Mahkamah Rendah ke Mahkamah Tinggi dan dari Mahkamah Tinggi ke Mahkamah Rayuan dengan mengehadkan rayuan dalam kes-kes permohonan interlokutori yang tidak memprejudiskan hak pihak-pihak ... Keduanya, berkenaan pindaan s 28. Fasal 2 rang undang-undang bertujuan untuk meminda s 28 Akta 91 untuk mengehadkan hak untuk merayu dari mahkamah rendah ke Mahkamah Tinggi dalam kes sivil, dalam hal keadaan jika mahkamah rendah itu menolak mana-mana permohonan untuk penghakiman terus atau mana-mana permohonan untuk membatalkan mana-mana writ ataupun pliding atau membenarkan mana-mana permohonan peruntukan mengetepikan penghakiman ingkar ... Pindaan s 68. Fasal 8 bertujuan untuk meminda s 68 Akta 91 bagi mengehadkan hak untuk merayu dari Mahkamah Tinggi ke Mahkamah Rayuan dalam kes sivil, dalam hal keadaan Mahkamah Tinggi itu menolak mana-mana permohonan untuk penghakiman terus mana-mana permohonan untuk membatalkan mana-mana writ ataupun pliding dan membenarkan mana-mana permohonan untuk mengetepikan penghakiman ingkar.

[24] *Hence, we agree with the learned counsel for the defendants that s 68*

(1)(f) [CJA] is only applicable to applications filed and determined by the High Court in exercising its original jurisdiction as the court in the first instance and not in exercising its appellate jurisdiction. (Emphasis added.)

(b) according to Wong Kian Kheong JCA, at [62]:

[62] *I am of the view that the above decision by Hashim Hamzah JCA may be fortified by the following reasons*:

(1) *the CJA has been revised under the Revision of Laws Act 1968. According to s 2(1)(b) of the Interpretation Acts 1948 and 1967 (IA), Part 1 IA applies to the construction of CJA Section 16 IA (in Part 1 IA) states as follows:*

'16. *Notice to be taken of division into parts*, chapters, etc.

Where an Act or subsidiary legislation *is divided into parts* or chapters or otherwise, *the fact and particulars of the division shall, without express mention thereof in the Act* or subsidiary legislation, *be taken notice of in all courts and for all purposes whatsoever*'. (Emphasis added.)

Section 16 IA has been applied in Spring Max Capital Sdn Bhd v Johari bin Hasan & Ors and another case [2020] MLJU 399; [2021] 2 MLRH 449. *In Spring Max Capital, at [54(1)], the High Court has taken judicial cognizance of Part VI (Of Certain Relations Resembling Those Created By Contract) of the Contracts Act 1950 (CA) in the construction of s 71 CA (in Part VI CA).*

Section 28 has been placed in Part II CJA as follows:

Part II

The High Court

General

...

Appellate Jurisdiction

a 28 *Non-appealable matters* (Emphasis added.)

Part III CJA states as follows, among others:

Part III

The Court of Appeal

General

...

Appellate Jurisdiction — Civil Appeals

...

s 68 *Non-appealable matters*. (Emphasis added.)

The fact that Parliament has deliberately placed s 28 of the CJA in Part II CJA and s 68 of the CJA in Part III CJA means that there is a clear distinction between the High Court's Appellate Civil Jurisdiction (in Part II CJA) and the Court of Appeal's Appellate Civil Jurisdiction (in Part III CJA), If we accept the learned JC's above view that This Appeal is not appealable pursuant to of thes 68(1)(f) CJA:

(a) *this will be contrary to the clear demarcation of Part II and Part III CJA by the legislature; and*

(b) *this will render redundant s 16 IA;*

(2) a party's right of appeal to the Court of Appeal against a decision of the High Court is expressly provided by s 67(1) CJA [Party's Right to Appeal (Court of Appeal)]. Act A1661 [which introduces s 68(1)(f) CJA] has not, either expressly or by necessary implication, repealed the Defendants' right to file This Appeal pursuant to s 67(1) CJA. Furthermore, courts cannot and should not on their own motion curtail the Party's Right to Appeal (Court of Appeal). This is because if written law has conferred the Party's Right to Appeal (Court of Appeal), courts should merely enforce the Party's Right to Appeal (Court of Appeal). If otherwise, courts may be misperceived by parties in particular and the public in general, to have impeded the parties' access to the appellate courts, be it the High Court or the Court of Appeal. I rely on the following judgment of the Federal Court delivered by Arifin Zakaria FCJ (as he then was) in *Wan Sagar Wan Embong v Harun Taib* [2008] 6 MLJ 473; [2008] 2 MLRA 619; [2009] 1 CLJ 457, at [7]:

[7] We agree with the respondent that an appeal is maintainable where statute and rules of procedure provide for it. Appeal is a right created by statute and the courts cannot create or take away such a right ... (Emphasis added.)

H. EFFECT OF 'NON-SPEAKING' TWO GOJS (ENCLS 28 AND 40)

[29] We accept the submission by the plaintiffs' learned counsel that the two GOJs (encls 28 and 40) only alluded to the competence of the two appeals. As such, the two GOJs (encls 28 and 40) were, regrettably,'non-speaking' judgments. Having said that, we cannot accede to the contention by the plaintiffs' learned counsel that solely due to the fact that the two GOJs (encls 28 and 40) had not provided any reason for the two High Court's decisions (encls 28 and 40), the Court of Appeal should intervene and allow these two appeals. Notwithstanding the fact that a lower court's judgment is not reasoned one, an appellate court has the judicial duty to decide an appeal by:

(1) sieving through the appeal records and the parties' written submission; and

(2) listening to oral submission by learned counsel.

Our above decision is premised on the following cases:

(a) Raus Sharif CJ delivered the following judgment of the Federal Court in *Dr Hari Krishnan & Anor v Megat Noor Ishak bin Megat Ibrahim & Anor and another appeal* [2018] 3 MLJ 281, at [38]:

> [38] *We endorse the view of the Court of Appeal quoted above, and agree that the High Court judgment in the instant case was a non-speaking one. Nevertheless, as will be elaborated below, it does not follow that a retrial or a rehearing should be ordered*. (Emphasis added.)

(b) it is decided as follows in *Corsa Tech Sdn Bhd v YTB Impression Sdn Bhd & Ors* [2021] MLJU 2210, at [27(2)]:

> [27] As explained in *Dr Hari Krishnan*:
>
> ...
>
> (2) *if a trial court's GOJ is not a 'speaking' one, such a fact does not ipso facto mean that the appellate court should reverse the trial judge's decision and order a retrial. In such an event, the appellate court has a judicial duty to sieve through the appeal records to determine whether there should be any appellate intervention regarding the trial Court's decision*. (Emphasis added.)

I. EFFECT OF SA' AMRAN

[30] Section 96(1) to (3) of the RTA provide as follows:

> s 96 *Duty of insurers to satisfy judgements against persons insured in respect of third party risks.*
>
> (1) *If, after a certificate of insurance has been delivered under subsection 91(4) to the person by whom a policy has been effected, judgement in respect of any such liability as is required to be covered by a policy under paragraph 91(1)(b) (being a liability covered by the terms of the policy) is given against any person insured by the policy, then notwithstanding that the insurer may be entitled to avoid or cancel, or may have avoided or cancelled the policy, the insurer shall, subject to this section, pay to the persons entitled to the benefit of the judgement any sum payable thereunder in respect of the liability, including any amount payable in respect of costs and any sum payable in respect of interest on that sum by virtue of any written law relating to interest on judgements.*
>
> (2) *No sum shall be payable by an insurer under subsection (1) —*
>
> (a) *in respect of any judgement, unless before or within seven days after the commencement of the proceedings in which the judgement was given, the insurer had notice of the proceedings*;
>
> (b) in respect of any judgement, so long as execution thereon is stayed pending an appeal; or

A (c) in connection with any liability, if before the happening of the event which was the cause of the death or bodily injury giving rise to the liability the policy was cancelled by mutual consent or by virtue of any provision contained therein and either —

B (i) before the happening of the said event the certificate was surrendered to the insurer or the person to whom the certificate was delivered made a statutory declaration stating that the certificate had been lost or destroyed;

C (ii) after the happening of the said event, but before the expiration of a period of fourteen days from the taking effect of the cancellation of the policy, the certificate was surrendered to the insurer or the person to whom the certificate was delivered made such a statutory declaration as aforesaid; or

D (iii) either before or after the happening of the said event, but within the said period of fourteen days, the insurer has commenced proceedings under this Part in respect of the failure to surrender the certificate.

E (3) *No sum shall be payable by an insurer under subsection (1) if before the date the liability was incurred, the insurer had obtained a declaration from a court that the insurance was void or unenforceable*:

F *Provided that an insurer who has obtained such a declaration as aforesaid in an action shall not thereby become entitled to the benefit of this subsection as respects any judgement obtained in proceedings commenced before the commencement of that action unless, before or within seven days after the commencement of that action, he has given notice thereof to the person who is the plaintiff in the said proceedings specifying the grounds on which he proposes to rely, and any person to whom notice of such an action is so given shall be entitled if he thinks fit to be made a party thereto*. (Emphasis added.)

G **[31]** On 5 August 2022, the Federal Court has decided in *Sa' Amran* as follows, among others:

H (1) once a claimant has obtained a final judgment against an insured in the claimant's suit (insured's liability) ('claimant's judgment (insured)'), the claimant may enforce the claimant's judgment (insured) directly against the insured under s 96(1) of the RTA even though:

(a) the claimant has not filed a suit against the insurer to recover the sum adjudged in the claimant's judgment (insured) — please refer to [102], [103] and [218]; and

I (b) the insured ceased to have an insurable interest in the motor vehicle (the subject matter of the policy) at the time of the accident involving the motor vehicle — please see [3] and [69].

(2) the fourth and seventh appeals in *Sa' Amran* ('fourth and seventh appeals (*Sa' Amran*)') concerned allegations by insurers that claimants had filed fraudulent negligence suits against insured persons — please refer to [122] and [222]. In the fourth and seventh appeals (*Sa' Amran*):

(a) the insurers filed suits in the High Court to invalidate the relevant insurance policies and obtained High Court orders which invalidated the policies ('policy invalidation orders') — please see [125] to [127], [144] and [223];

(b) the trials of the negligence suits had been completed in the sessions courts as follows:

(i) the negligence suits were allowed by the sessions courts; and

(ii) the insurers' allegations of fraudulent negligence suits by claimants against insured persons had been disproved,

('trial courts' factual findings of negligence (no fraudulent claims by claimants)') — please refer to [134], [145] and [226]; and

(c) in view of the trial courts' factual findings of negligence (no fraudulent claims by claimants), the Federal Court decided in [159], [160], [164] to [166], [172] and [232] to [234] that the insurers could not rely on the policy invalidation orders to evade liability to the claimants.

[32] Premised on s 96 of the RTA as interpreted in *Sa' Amran*, we are of the following view:

(1) as an insurer has a statutory liability under s 96(1) of the RTA to pay to a claimant who has obtained a judgment sum against an insured in a claimant's suit (insured's liability), the insurer has a statutory 'interest' pursuant to s 96(1) of the RTA to intervene in the claimant's suit (insured's liability) ('insurer's statutory liability (s 96(1) of the RTA)') within the meaning of O 15 r 6(2)(b)(i) and/or (ii) read with O 1A and O 2 r 1(2) of the RC. Order 1A, O 2 r 1(2), O 15 r 6(2)(b)(i) and (ii) of the RC are reproduced below:

O 1A *Regard shall be to justice*

In administering [RC], the Court or a Judge shall have regard to the overriding interest of justice and not only to the technical non-compliance with [RC].

O 2 r 1(2) *[RC] are a procedural code and subject to the overriding objective of enabling the Court to deal with cases justly. The parties are required to assist the Court to achieve this overriding objective.*

O 15 r 6(2) *Subject to this rule, at any stage of the proceedings in any cause or matter, the Court may on such terms as it thinks just and either of its own motion or on application —*

(b) *order any of the following persons to be added as a party, namely —*

A

(i) *any person who ought to have been joined as a party or whose presence before the Court is necessary to ensure that all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon; or*

B

(ii) *any person between whom and any party to the cause or matter there may exist a question or issue arising out of or relating to or connected with any relief or remedy claimed in the cause or matter which, in the opinion of the Court, would be just and convenient to determine as between him and that party as well as between the parties to the cause or matter*. (Emphasis added.)

C

The insurer's right to intervene in a claimant's suit (insured's liability) arises as follows:

(a) it is 'necessary' for an insurer to intervene in a claimant's suit (insured's liability) under O 15 r 6(2)(b)(i) of the RC so as to ensure that 'all matters in dispute in the cause or matter may be effectually and completely determined and adjudicated upon'; *and/or*

D

(b) as provided in O 15 r 6(2)(b)(ii) of the RC, with regard to any relief claimed by the claimant against an insured in a claimant's suit (insured's liability), there exists a question or questions between:

E

(i) the insurer on the one part; and

(ii) the claimant and/or insured on the other part,

(question(s) (insurer/claimant/insured))

– for which it would be just and convenient to determine the question(s) (insurer/claimant/insured).

F

It is to be noted that the scope of O 15 r 6(2)(b)(ii) of the RC is wider than that provided by O 15 r 6(2)(b)(i) of the RC. Reliance is placed on the following judgment in *Celcom (Malaysia) Berhad & Anor v Tan Sri Dato' Tajudin bin Ramli & Ors and another suit* [2016] MLJU 1167, at [61(4)]:

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[61(4)] *the scope of (O 15 r 6(2)(b)(ii) RC) is wider than (O 15 r 6(2)(b)(i) RC)*. In *Arab Malaysian Merchant Bank*, at p 28, *Gunn Chit Tuan SCJ decided as follows in the Supreme Court*:

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> It was held by the Privy Council in the *Pegang Mining Co Ltd* case that one of the principal objects of O 16 r 11 of the former Rules of the Supreme Court 1957, is to enable the court to prevent injustice being done to a person whose rights will be affected by its judgment by proceeding to adjudicate upon the matter in dispute in the action without his being given an opportunity of being heard. It must be noted that the Privy Council in that case added that to achieve that object calls for a flexibility of approach which made it undesirable in that case, in which the facts are unique, to attempt to lay down any proposition which could be applicable to all cases. *Our present O 15 r 6 of the Rules of the High Court 1980, which replaced the former O 16 r 11 of the Rules of the Supreme Court 1957, is in*

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pari materia with O 15 r 6 of the UK Rules of the Supreme Court. The scope of the present rule, so far as concerns the joinder of persons not parties, has been significantly extended by the addition of para 2(b)(ii) … (Emphasis added.)

(c) O 15 r 6(2)(b)(i) and (ii) of the RC should be 'widely or liberally interpreted' because such an interpretation ensures that all parties who have any interest in a claimant's suit (insured's liability), are brought before the sessions court trying the claimant's suit (insured's liability) so as to secure a just, expeditious and economical disposal of the claimant's suit (insured's liability) — please refer to *Celcom*, at [61(3)]; and

(d) by reason of O1A and O 2 r 1(2) of the RC, the court shall have regard to the 'overriding interest of justice' in the application of O 15 r 6(2)(b)(i) and (ii) of the RC. It is clearly in the interest of justice for an insurer to intervene in a claimant's suit (insured's liability), especially when the insurer alleges that a fraudulent negligence suit has been filed by a claimant against an insured.

(2) if:

(a) a claimant has given notice of the claimant's suit (insured's liability) in the sessions court against an insured to the insurer as required by s 96(2)(a) of the RTA; and

(b) the insurer avers that the policy is 'void or unenforceable' as understood in s 96(3) of the RTA

– instead of filing a new insurer's suit (policy invalidation) in the High Court, the insurer should apply for leave of the sessions court to intervene in the claimant's suit (insured's liability) as a co-defendant (with the insured) [as explained in the above sub-paragraph (1)] and file a counterclaim in the sessions court against the claimant and insured for the following relief, among others:

(i) a declaration that the policy is void; and

(ii) a declaration that the insurer is not liable to the claimant under the policy, ('insurer's counterclaim (sessions court)').

It is to be noted that the sessions court has 'unlimited jurisdiction' under s 65(1)(a) of the Subordinate Courts Act 1948 ('the SCA') to 'try all actions and suits of a civil nature in respect of motor vehicle accidents'. According to s 65(5)(b) of the SCA, the sessions court has the jurisdiction to grant declarations;

(3) an insurer's counterclaim (sessions court) can be made pursuant to s 96(3)

of the RTA read with O 15 rr 2(1) and 3(1) of the RC. Order 15 rr 2(1) and 3(1) of the RC state as follows:

> *Counterclaim against plaintiff*
>
> O 15 r 2(1) Subject to rule 5(2), *a defendant in any action who alleges that he has any claim or is entitled to any relief or remedy against a plaintiff in the action in respect of any matter (whenever and however arising) may, instead of bringing a separate action, make a counterclaim in respect of that matter; and where he does so he shall add the counterclaim to his defence*.
>
> *Counterclaim against additional parties*
>
> O 15 r 3(1) *Where a defendant to an action who makes a counterclaim against the plaintiff alleges that any other person (whether or not a party to the action) is liable to him along with the plaintiff in respect of the subject matter of the counterclaim, or claims against such other person any relief relating to or connected with the original subject matter of the action, then, subject to rule 5(2), he may join that other person as a party against whom the counterclaim is made*. (Emphasis added.)

An insurer's counterclaim (sessions court) can be made against a claimant under O 15 r 2(1) of the RC because the insurer is entitled to seek a declaration that the insurer is not liable to the claimant pursuant to s 96(3) RTA. An insurer's counterclaim (sessions court) can be made against an insured pursuant to O 15 r 3(1) of the RC on the ground that the declaration sought by the insurer against the insured (ie, the policy is void) constitutes 'relief relating to or connected with the original subject matter' of the claimant's suit (insured's liability);

(4) the sessions court should order a joint trial of the claimant's suit (insured's liability) and insurer's counterclaim (sessions court) ('joint trial') unless there are grounds for the sessions court to order separate trials for the claimant's suit (insured's liability) and insurer's counterclaim (sessions court) pursuant to O 15 r 5(1) of the RC. O 15 r 5(1) of the RC states as follows:

> *If claims in respect of two or more causes of action are included by a plaintiff in the same action or by a defendant in a counterclaim, or if two or more plaintiffs or defendants are parties to the same action, and it appears to the Court that the joinder of causes of action or of parties, as the case may be, may embarrass or delay the trial or is otherwise inconvenient, the Court may order separate trials or make such other order as may be expedient.* (Emphasis added.)

(5) the above proposal for a joint trial has the following advantages:

(a) a joint trial ensures justice for claimants, insured and insurers;

(b) a joint trial will avoid a multiplicity of proceedings as follows:

(i) a claimant's suit (insured's liability) may be filed without the insurer

being given the right to be heard regarding the commencement of a fraudulent negligence suit;

(ii) an insurer's suit (policy invalidation) may be concluded in the insurer's favour and in the absence of the claimant;

(iii) separate appeals may be lodged against decisions of courts of first instance in the claimant's suit (insured's liability) and insurer's suit (policy invalidation) ('decisions (courts of first instance)'). It is to be noted that a party may have two rights of appeal against a decision of the sessions court to the High Court and thereafter to the Court of Appeal. There is only one right of appeal to the Court of Appeal against a High Court's decision and leave of the Federal Court has to be obtained before there can be an appeal to the Federal Court against a decision of the Court of Appeal;

(iv) applications to stay the execution of the decisions (courts of first instance) pending the disposal of appeals against the decisions (courts of first instance);

(v) parties who are absent during the decisions (courts of first instance), may apply to set aside the decisions (courts of first instance) ('setting aside applications');

(vi) applications to stay the execution of the decisions (courts of first instance) pending the disposal of the setting aside applications;

(vii) appeals may be lodged against decisions made in the setting aside applications ('decisions (setting aside applications)); and

(viii) applications to stay the execution of the decisions (setting aside applications) pending the disposal of appeals against the same,

('multiple proceedings').

(c) there will not be conflicting decisions by different courts in the multiple proceedings;

(d) limited judicial resources will be optimally used to complete a joint trial (instead of being wasted to dispose of multiple proceedings);

(e) if an insurer's suit (policy invalidation) is tried by way of an insurer's counterclaim (sessions court), this will directly reduce the number of cases filed by insurers in the High Court to invalidate policies; and

(f) parties can save time, costs and efforts by concentrating solely on a joint trial and not on multiple proceedings.

J. WHETHER INTERVENER COULD INTERVENE AND SET ASIDE SESSIONS COURT'S JUDGMENT

[33] Firstly, as explained in the above sub-para 32(1), the intervener had a right to intervene in the negligence suit as follows:

(1) in view of the insurer's statutory liability under s 96(1) of the RTA, it was 'necessary' for the intervener to intervene in the negligence suit under O 15 r 6(2)(b)(i) of the RC so as to ensure that 'all matters in dispute in the [negligence suit] may be effectually and completely determined and adjudicated upon';

(2) by virtue of O 15 r 6(2)(b)(ii) of the RC, with regard to the relief claimed by the plaintiffs against the defendant in the negligence suit, there existed a question between:

(a) the intervener on the one hand; and

(b) the plaintiffs and defendant on the other hand

— on whether a fraudulent negligence suit had been instituted by the plaintiffs ('question (intervener/plaintiffs/defendant)') for which it would be just and convenient to determine the Question (intervener/plaintiffs/defendant).

(3) in accordance with O1A and O 2 r 1(2) of the RC, it is only just for the intervener to intervene in the negligence suit so as to ensure that the sessions court can decide whether the negligence suit had been fraudulently filed by the plaintiffs.

[34] Secondly, the learned High Court judge should have set aside the sessions court's judgment on the following grounds:

(1) in view of the insurer's statutory liability under s 96(1) of the RTA and intervener's averment (fraudulent negligence suit), in accordance with the second rule of natural justice, the intervener had a right to be heard regarding the intervener's averment (fraudulent negligence suit) before the sessions court decides the negligence suit. It is to be emphasised that no evidence had been adduced by the plaintiffs in the negligence suit regarding the purported 100% liability in negligence on the defendant's part;

Our apex court has decided in the following two cases that a judgment or order, including a consent judgment or consent order (judgment/order), does not bind a party if the party has been deprived of his or her right to be heard before the judgment/order is made:

(a) in the Supreme Court case of *Toh Seow Ngan & Ors v Toh Seak Keng & Ors* [1990] 2 MLJ 303 at 306, Mohd Azmi SCJ has decided as follows:

There is no denial that in breach of the rules of natural justice, the High Court had no jurisdiction to make the consent order affecting the rights of the appellants

...

...

For the above reasons, we find the appellants are not estopped from challenging the validity of the consent order. (Emphasis added.)

(b) Edgar Joseph Jr FCJ has delivered the following judgment of the Federal Court in *Muniandy a/l Thamba Kaundan & Anor v D & C Bank Bhd & Anor* [1996] 1 MLJ 374 at 381–382 and 383:

The Natural Justice Point: audi alteram partem

The second point I should like to take is the natural justice point.

...

In my view, even if counsel for the chargees were correct in his description of the nature of the reliefs prayed for by the chargees in their originating summons — though, in point of fact, he was not — this would not have relieved the chargees of their duty to serve notice of the adjourned hearing of the originating summons on the chargors because I consider that O 83 r 2(4) has a common law content. In other words, in my view, O 83 r 2(4) is merely a statutory enunciation of the fundamental rule of natural justice as expressed in the Latin maxim audi alteram partem (hear the other side) so that the obligation to serve notice of the adjourned hearing of the originating summons remained even if O 83 r 2(4) did not apply. It is a familiar canon of statutory interpretation that unless a contrary intention appears, an enactment by implication imports the principle of the maxim audi alteram partem. It was said by Fortescue J in R v University of Cambridge (1723) 1 Stra 557, *where Dr Bentley had been deprived of his academic degrees by decree, that the principles goes back to the garden of Eden. This is how His Lordship put it*:

The objection for want of notice can never be got over. The laws of God and man both give the party an opportunity to make his defence, if he has any. I remember to have heard it observed by a very learned man, upon such an occasion, that even God himself did not pass sentence upon Adam before he was called on to make his defence. 'Adam' (says God), 'where art thou? Hast thou not eaten of the tree whereof I commanded thee that thou shouldest not eat?' And the same question was put to Eve also

...

In my view, counsel for the chargors was correct in his contention regarding the natural justice point. (Emphasis added.)

(2) according to Denning LJ (as His Lordship then was) in the English Court of Appeal case of *Lazarus Estates Ltd v Beasley* [1956] 1 All ER 341, at 345, 'fraud unravels everything'. It is apposite to quote the following judgment in *Lazarus Estates*:

> *We are in this case concerned only with this point: Can the declaration be challenged on the ground that it was false and fraudulent? It can clearly be challenged in the criminal courts. The landlord can be taken before the magistrate and fined £30 (see Sch 2, para 6) or he can be prosecuted on indictment, and (if he is an individual) sent to prison (see s 5 of the Perjury Act, 1911). The landlords argued before us that the declaration could not be challenged in the civil courts at all, even though it was false and fraudulent, and that the landlords can recover and keep the increased rent even though it was obtained by fraud. If this argument is correct, the landlords would profit greatly from their fraud. The increase in rent would pay the fine many times over. I cannot accede to this argument for a moment. No court in this land will allow a person to keep an advantage which he has obtained by fraud. No judgment of a court, no order of a Minister, can be allowed to stand if it has been obtained by fraud. Fraud unravels everything. The court is careful not to find fraud unless it is distinctly pleaded and proved; but once it is proved it vitiates judgments, contracts and all transactions whatsoever; see, as to deeds, Collins v Blantern (1767) (2 Wils KB 342), as to judgments, Duchess of Kington's Case (1776) (1 Leach 146), and, as to contracts, Master v Miller (1791) (4 Term Rep 320). So here I am of opinion that, if this declaration is proved to have been false and fraudulent, it is a nullity and void and the landlords cannot recover any increase of rent by virtue of it.* (Emphasis added.)

The above judgment in *Lazarus Estates* has been applied by Nallini Pathmanathan FCJ in the Federal Court in *Ong Leong Chiou & Anor v Keller (M) Sdn Bhd & Ors* [2021] 3 MLJ 622, at [99(a)].

[35] Thirdly, the High Court had allowed the intervener's appeal (encl 28) by allowing the intervener to intervene in the negligence suit. The learned High Court judge then purportedly allowed the intervener's appeal (encl 40) but inexplicably, the High Court did not set aside the sessions court's judgment (as prayed for in encl 40).

As explained in the above para 34, the sessions court's judgment should be set aside. Accordingly, in the interest of justice, we not only set aside the sessions court's judgment but we also remit the negligence suit to the sessions court for an early trial to decide:

(1) the negligence suit; and

(2) the intervener's averment (fraudulent negligence suit).

An early trial of the negligence suit is ordered by this court because the incident occurred on 3 September 2014 and this case should not be further delayed to the detriment of the plaintiffs and intervener. The Court of Appeal has the power to grant the above orders under the following statutory provisions:

(a) by virtue of s 69(1) of the CJA, 'the Court of Appeal shall have all the powers ... of the High Court';

(b) the Court of Appeal 'may ... give any judgment, and make any order which ought to have been given or made, and make such further or other orders as the case requires' — please refer to s 69(4) of the CJA;

(c) according to s 69(5) CJA, the above powers of the Court of Appeal 'may be exercised notwithstanding that the notice of appeal relates only to part of the decision, and the powers may also be exercised in favour of all or any of the respondents or parties although the respondents or parties have not appealed from or complained of the decision'; and

(d) the Court of Appeal has an inherent power under r 105 of the Rules of the Court of Appeal 1994 ('the RCA') 'to make any order as may be necessary to prevent injustice'. We reproduce below r 105 of the RCA:

> r 105 *Inherent powers of the Court.*
>
> *For the avoidance of doubt, it is declared that nothing in these [RCA] shall be deemed to limit or affect the inherent powers of the Court to make any order as may be necessary to prevent injustice* or to prevent an abuse of the process of the Court. (Emphasis added.)

K. CAN PLAINTIFFS RELY ON STAGHORN TO SUPPORT THESE TWO APPEALS?

[36] In *Staghorn*, among others:

(1) a piece of land was used as a security for the repayment of a loan by the appellant bank;

(2) upon a default in the repayment of the loan, the appellant bank applied to the High Court by way of an originating summons (OS) and obtained an order for the sale of the land ('order (land sale)');

(3) pursuant to the order (land sale), the land was successfully auctioned to Mr Wong Bin Chen;

(4) Staghorn Sdn Bhd claimed to have purchased the land from the registered proprietor of the land ('alleged purchaser');

(5) the alleged purchaser applied successfully to the High Court to intervene in the OS and to set aside the order (land sale) ('High Court's order (intervention and setting aside sale order)'); and

(6) the Federal Court allowed the appellant bank's appeal and set aside the High Court's order (intervention and setting aside sale order) on the following grounds:

   (a) the alleged purchaser could not intervene in the OS because the proceedings in the OS had been concluded; and

   (b) as the OS had been concluded, the High Court was *functus officio*.

Hence, the High Court's order (intervention and setting aside sale order) could not be lawfully made.

[37] We have no hesitation to decide that the plaintiff cannot rely on *Staghorn* to support these two appeals. This is because *Staghorn* can be easily distinguished from the present case as follows:

(1) *Staghorn* does not concern the insurer's statutory liability under s 96(1) RTA which entitles the intervener to intervene in the negligence suit — please refer to the above para 33;

(2) unlike *Staghorn*, as explained in the above sub-para 34(1), the intervener had a right to be heard with regard to the intervener's averment (fraudulent negligence suit); and

(3) in *Staghorn*, the order (land sale) was not procured by way of fraud.

L. WHAT IS EFFECT OF HIGH COURT'S POLICY INVALIDATION ORDER AND HIGH COURT'S DISMISSAL (INTERVENER'S SUIT)?

[38] The High Court's policy invalidation order does not bind the plaintiffs because the intervener did not cite the plaintiffs as co-defendants in the intervener's suit (policy invalidation). As the plaintiffs had been deprived of their right to be heard in the intervener's suit (policy invalidation), in accordance with the second rule of natural justice (please refer to the above sub-para 34(1)), the intervener cannot rely on the High Court's policy invalidation order to resist these two appeals.

[39] We are of the view that the High Court's dismissal (intervener's suit) is of no consequence in these two appeals because the intervener's averment (fraudulent negligence suit) can only be tried in the sessions court. It is to be emphasised that no evidence had been adduced in the negligence suit. In other words, the question (intervener/plaintiffs/defendant) is still a live issue.

M. WAS SESSIONS COURT FUNCTUS OFFICIO IN DECIDING ENCLS 28 AND 40?

[40] The doctrine of *functus officio* has been explained by Nallini Pathmanathan FCJ in the Federal Court case of *Stone World Sdn Bhd v Engareh (M) Sdn Bhd* [2020] 12 MLJ 237, at [13], as follows:

> [13] *It is settled law that once a court has pronounced a final order it does not possess the authority to re-open, alter, amend and supplement the final order and judgment relating to the dispute it has adjudicated upon. This rule, known as the doctrine of functus officio, stems from the principle of finality in litigation. There would be great uncertainty and chaos if courts were permitted to review and reconsider final orders and judgments.* (Emphasis added.)

[41] We are of the view that the sessions court was not *functus officio* when the learned sessions court judge heard encls 28 and 40. The *functus officio* doctrine is provided by case law and cannot override written law. As explained in the above para 33, s 96(1) of the RTA has expressly provided for the insurer's statutory liability which entitles the intervener to intervene in the negligence suit. If we have applied the doctrine of *functus officio* to deny the intervener the right to intervene in the negligence suit, this will be contrary to Parliament's intention in imposing the insurer's statutory liability pursuant to s 96(1) of the RTA.

N. WHETHER INTERVENER WAS ESTOPPED FROM FILING ENCLS 28 AND 40

[42] According to the plaintiffs' learned counsel, the intervener is estopped from filing encls 28 and 40 because the intervener had instructed its solicitors not to act for the defendant in the sessions court ('intervener's conduct'). With respect, we do not agree. We are of the view that the intervener is not estopped by the intervener's conduct from proceeding with encls 28 and 40. This decision is premised on the following evidence and reasons:

(1) Messrs SKL was initially appointed by the intervener to act for the defendant in the negligence suit. This was understandable because generally (in the absence of fraud by, among others, the defendant), the intervener would be liable under the policy to indemnify the defendant and to pay to the plaintiffs the judgment sum adjudged by the sessions court in the negligence suit (pursuant to s 96(1) of the RTA);

(2) the intervener's conduct was due solely to the intervener's discovery. More importantly, the intervener's conduct was the only lawful option available to the intervener. This was because the intervener could not allege fraud on the part of the defendant and at the same time, continue to instruct Messrs SKL to act for the defendant in the negligence suit. Accordingly, the intervener's conduct cannot restrain, let alone estop, the intervener from exercising its right to resist the insurer's statutory liability under s 96(1) of the RTA based on the intervener's averment (fraudulent negligence suit); and

(3) the doctrine of equitable estoppel is applied by courts so as to achieve justice. In this case, the intervener had raised the intervener's averment (fraudulent negligence suit). If the intervener is estopped by the intervener's conduct from raising the intervener's averment (fraudulent negligence suit), this will cause an injustice to the intervener.

[43] Before a party (X) can rely on the equitable doctrine of estoppel, X must come to Equity with clean hands — please see the judgment of Low Hop Bing J (as he then was) in the High Court case of *Natseven TV Sdn Bhd v Television*

New Zealand Limited [2001] MLJU 511; [2001] 4 AMR 4648, at 4666.

[44] In this case, the plaintiffs had obtained the sessions court's judgment on 28 September 2017. The plaintiffs only demanded the intervener to pay the total sum of damages, interest and costs on 28 August 2020. There was an inordinate delay of two years and 11 months from the date of the sessions court's judgment before the plaintiffs demanded the intervener to honour the sessions court's judgment under s 96(1) of the RTA. Such an inequitable conduct by the plaintiffs, in our view, disentitles the plaintiffs from relying on the equitable doctrine of estoppel to support these two appeals.

[45] More disconcerting was the sessions court's judgment (payment into client's account (plaintiffs' solicitors)). It is decided in *Syahin Hafiy Danial bin Soh Ahmad Luptepi Amin v Mansur bin Yunus & Anor* [2021] 8 MLJ 297 at [31] and [32], as follows:

> *J. Does [sessions court] have power to order judgment sum be paid into client account of plaintiff's solicitors?*
>
> [31] *It is decided in Poon Weng San & Anor v Chandran a/l Narunan & Anor* [2019] MLJU 1358; [2019] 1 LNS 621, at [24]–[29], as follows:
>
> > [24] *When I inquired from learned counsel for the plaintiffs and defendants on whether the court has power under the law to order a judgment sum to be paid into a solicitor's client account, they answered that there was a 'general practice' in personal injury claims for parties to consent to such a court order (Alleged Practice).*
> >
> > [25] *Firstly, r 2 of the Solicitors' Account Rules 1990 (SAR) defines a 'client account' as follows*:
> >
> > > *'client account' means a current or deposit account at a bank in the name of the solicitor in the title of which the word 'client' appears'.* (Emphasis added.)
> >
> > *It is clear from the definition of a solicitor's 'client account' in r 2 SAR that such an account is owned by the solicitor and not by the client (party in a suit).*
> >
> > [26] *I have perused the Courts of Judicature Act 1964, Subordinate Courts Act 1948, Legal Profession Act 1976, SAR and RC. I cannot find any written law which confers power on a court to order a judgment sum (damages and costs) to be paid to a person who is not a party in the suit (Stranger). Nor can I find any previous case which has decided that the court has the power to order a judgment sum be paid to a Stranger. My research has also not revealed any power for the court to order a judgment sum to be deposited into a solicitor's client account.*
> >
> > [27] *I am of the view the Alleged Practice cannot confer any power on a court to order a judgment sum to be paid into a solicitor's client account.*
> >
> > [28] *Rule 27(a) of the Legal Profession (Practice and Etiquette) Rules 1978 (LPR) provides as follows*:
> >
> > > r 27 *Advocate and solicitor not to appear where pecuniarily interested*

(a) *An advocate and solicitor shall not appear in any matter in which he is directly pecuniarily interested.* (Emphasis added.)

If the court orders a judgment sum to be paid into a solicitor's client account, this may 'facilitate' a breach of r 27(a) LPR (Breach) by Advocates and Solicitors (A&S).

[29] *Lastly, if the court has no power under the law to order a judgment sum to be paid to a Stranger, I am of the view that parties in an action cannot consent to such a payment. Consequently, parties in a suit cannot consent to a court order for a judgment sum to be deposited into a solicitor's client account. This is understandable because parties cannot consent to or abet in the Breach by A&S.* (Emphasis added.)

[32] *Based on the reasons explained in Poon Weng San, the judgment sum should not have been paid into the client account of the plaintiff's solicitors. Hence, the learned (sessions court judge) has committed an error of law in this respect.* (Emphasis added.)

O. HAD INTERVENER'S TWO APPEALS (ENCLS 28 AND 40) BECOME ACADEMIC?

[46] We cannot understand how the intervener's two appeals (encls 28 and 40) had become academic when the sessions court had not commenced a trial to decide the negligence suit. Furthermore, the sessions court has yet to decide on the intervener's averment (fraudulent negligence suit). It is crystal clear that the question (intervener/plaintiffs/defendant) regarding the intervener's averment (fraudulent negligence suit) is a live issue.

P. DID INTERVENER ABUSE COURT PROCESS?

[47] We cannot accept the submission by the plaintiffs' learned counsel that the intervener had abused court process by filing the intervener's two appeals (encls 28 and 40) after obtaining the intervener's interlocutory injunction (plaintiffs). The exercise of the intervener's right to resist the insurer's statutory liability under s 96(1) of the RTA, cannot constitute an abuse of court process, especially in light of the intervener's discovery and intervener's averment (fraudulent negligence suit).

Q. OUTCOME OF TWO APPEALS

[48] Premised on the above evidence and reasons, the two appeals are dismissed with the following order:

(1) the intervener is allowed to intervene as the second defendant in the negligence suit;

(2) the sessions court's judgment is set aside;

(3) the negligence suit is remitted to the sessions court for an early trial with liberty to all parties to:

A (a) file further pleadings; and

(b) obtain pre-trial case management directions from the sessions court.

(4) costs of RM10,000 for each of the two appeals shall be paid by the B plaintiffs to the intervener (subject to allocatur fee).

Appeals dismissed.

Reported by Nabilah Syahida Abdullah Salleh

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